

Pension Benefit Guaranty Corporation

80-19

November 13, 1980

REFERENCE:

4021(b)(7) Plans Covered. Foreign Plans

OPINION:

This is in response to your request for a determination by the Pension Benefit Guaranty Corporation (the "PBGC") as to whether the above plan (the "Plan") is excluded from coverage under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") by Section 4021(b)(7) of the Act. We have concluded that the Plan is excluded from coverage.

Section 4021(b)(7) excludes from coverage any plan "which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens." You have represented that * * * the plan administrator/plan sponsor, is located in California and that the Plan's assets are held in California by the Trust Company of California, which is responsible for benefit administration.

However, you have also represented that all Plan records with respect to participation, vesting, and benefit accrual are maintained in Hong Kong and that all of the Plan's participants are nonresident aliens (residents of Hong Kong) who work outside the United States.

The question of whether a plan "is established and [*2] maintained outside of the United States" may be determined only with respect to the facts and circumstances of the operation of a particular plan. However, one of the factors to which the PBGC will attach particular weight is the work location of the employees covered by the Plan. Based on the representations which you have made, described in the paragraphs immediately preceding, the PBGC has made a determination that the Plan is excluded from coverage.

The Department of Labor has indicated that it agrees with the conclusions expressed in this letter for purposes of its interpretation of Section 4(b)(4) of the Act.

We will notify the PBGC's Office of Financial Operations to arrange for a refund of premium payments.

I hope I have been of assistance. If you have any questions, please contact the attorney assigned to this case, * * * at (202) 254-3010.

Henry Rose
General Counsel